

DECISION

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- A Monetary Order for unpaid rent under section 67 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on January 25, 2025, in person in accordance with section 89(1) of the Act. The Landlords provided a proof of service signed by the Tenant.

I find that the Landlords acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

No evidence was received by the Residential Tenancy Branch from the Tenant. The Tenant confirmed that they did not submit any evidence for consideration for the issue of the 10 Day Notice.

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters

- Partial Settlement

The parties agreed to the following at the hearing:

1. The Tenant will vacate the rental unit by 5:00 PM on March 1, 2025.

The parties confirmed they voluntarily agreed to this settlement and that it is final. Although the parties agreed to end the tenancy, I still must consider if any unpaid rent is owed for the 10 Day Notice. The Landlords are awarded an Order of Possession to give effect to the partial settlement reached.

- Tenant's Monetary Claim

This hearing was previously adjourned and at the previous hearing I advised the parties I would not be dealing with the Tenant's monetary worksheet they added 5 days before the previous hearing. At this hearing, the Tenant argued the monetary amount is related to the 10 Day Notice and they provided the Landlords with evidence of the monetary amount a week prior to the previous hearing. No evidence was uploaded to show the Landlords were served with an amendment or evidence of the monetary claim. Additionally, no amendment was filed with the RTB to include a monetary claim. The Landlords advised they did not receive any evidence or amendment for the monetary claim.

Rule of Procedure 4.1 and Policy Guideline #23 require changes to the application to be made through the amendment process. Additionally, the Landlords could not have reasonably anticipated that the Tenant would be seeking a monetary claim. Given that no amendment was filed, and the Landlords were not made aware of a monetary claim, I decline to add the Tenant's monetary claim to the hearing. The Tenant is free to file a new application seeking the monetary claim.

- Amendment

At the outset of the hearing the Landlords sought to increase their monetary claim from \$1,650.00 to \$3,300.00 to reflect the Tenant's failure to pay \$1,650.00 in monthly rent for February 2025, the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlords submitted the application.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on October 1, 2024, with a monthly rent of \$1,650.00, due on the first day of the month, with a security deposit in the amount of \$825.00.

The Tenant was served a 10 Day Notice for Unpaid Rent on January 2, 2025, for unpaid rent for January 2025 (the 10 Day Notice). The Tenant advised they received the 10 Day Notice on January 4, 2025, and disputed the 10 Day Notice on January 9, 2025.

Both parties confirmed the Tenant did not pay rent for January 2025 and no payments were made until the Tenant attempted to pay rent for February 2025 on February 3, 2025. The Landlords argued they did not accept February 2025 rent because they were advised it could result in the tenancy continuing. The Tenant confirmed they took back the e-transfer for February 2025 rent after it was not accepted within 24 hours.

The Tenant argued they did not pay January 2025 rent because the Tenant believed they were in discussions with the Landlords about money owed to them for an alleged dog bit. The Tenant confirmed there was no agreement that the Tenant was not required to pay January 2025 Rent.

The Landlords are seeking \$3,300.00 in unpaid rent for January 2025 and February 2025.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

The parties agreed that the Tenant would vacate the rental unit by 5:00 PM on March 1, 2025, as such it is not necessary to consider whether the 10 Day Notice should be cancelled.

For the above reasons, the Tenant's application for cancellation of the 10- Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to an Order of Possession based on a Notice to End Tenancy?

The Landlords are entitled to an Order of Possession based on the partial settlement agreed to by the parties.

Is the Landlord entitled to a Monetary Order for unpaid rent?

The testimony of both parties supports that the Tenant did not pay rent for January 2025 and did not make any payments towards January 2025 rent within the timeframe required. The parties also confirmed the Tenant attempted to pay February 2025 rent on February 3, 2025, but it was not accepted by the Landlord. The Tenant argued they are entitled to compensation from the Landlords for an alleged dog bite; however, I find that this is not a reason under the Act to not pay rent. Additionally, the Tenant confirmed they had no agreement with the Landlord to not pay January 2025 rent.

Based on the above, I find that the Tenant owes for January 2025 and February 2025 rent and the Landlords are entitled to a monetary amount of \$3,300.00. I authorize the Landlords to keep the Tenant's security deposit in partial satisfaction for the monetary amount awarded, under section 72 of the Act.

Therefore, I find the Landlord is entitled to a Monetary Order for the remaining unpaid rent of \$2,475.00

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$2,575.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$3,300.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 72 of the Act	-\$825.00

	Total Amount	\$2,575.00
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The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Landlords are authorized to keep the security deposit as partial satisfaction for the monetary amount awarded, under section 72 of the Act.

The Tenant's application for cancellation of the 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

In order to give effect to the partial settlement reached between the parties, and as discussed at the hearing, I grant an Order of Possession to the Landlords effective on **March 1, 2025, after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 18, 2025

Residential Tenancy Branch